

OPINION
47-47

April 10, 1947 (OPINION)

COOPERATIVE MARKETING ASSOCIATIONS

RE: Sale of Stock

This office has had under consideration your letter of March 20, 1947, relative to the sale of stock by local cooperative marketing associations.

You ask for our written opinion upon the following questions:

1. Must local cooperative marketing associations file with the North Dakota Securities Commission the information required under section 10-0405, North Dakota Revised Code of 1943 when the stock is sold among the persons who will be or who are members of the association?"
2. Would such sales be construed to be a form of public offering under the above section in as much as the sales are usually restricted to producers of agricultural products who will be the patrons of the association?"
3. Would the past sales of stock made by a local association be void or voidable by the purchaser because of the non-compliance with section 10-0405, North Dakota Revised Code of 1943?"

When you were in the office of the writer, you stated that particular reference was had to farmers cooperative elevator corporations, and that very few of these corporations had ever filed with the North Dakota Securities Commission the information required by section 10-0405 of the 1943 Revised Code.

Section 10-0402 of the 1943 Revised Code defines the term "securities" as used in the statute which must be submitted to the commission for approval before the same may be offered for sale or sold.

Section 10-0403 of the 1943 Revised Code defines the securities exempted from the provisions of the Securities Commission statutes. Among the securities exempted are those enumerated in subsection 3 of said section 10-0403, which reads as follows:

"Any security issued or guaranteed as to principal, interest, or dividends, by a corporation owning or operating a railroad or other public service utility, if the corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada or any province thereof."

The question to be considered is whether the stock of cooperative corporations, and particularly cooperative elevator associations, come within the classification of "securities" enumerated in the statute quoted, and also whether such cooperative corporations are public utilities within the meaning of said section.

Section 60-0201 of the 1943 Revised Code, so far as it is applicable here, provides as follows:

1. 'Commission' shall mean the public service commission;
2. 'Public warehouseman' shall mean the person, association, copartnership, or corporation owning or operating public warehouses which are located or doing business within this state, whether such owner or operator resides within this state or not;
3. 'Public warehouse' shall include respectively:
 - a. All buildings, elevators and warehouses; * * *

These cooperative elevator corporations do operate grain elevators which are warehouses open to public use for storage of grain at rates fixed by statute. In the case of Public Utilities Commission v. Monarch Refrigerating Co., 108 N.E. 716 (Ill.), it was held that grain elevators or warehouses where grain or other property is stored for a compensation are public warehouses and are included in the term "public utility." It was further held that "public utility" includes every company which owns or operates directly or indirectly for public use any plant, equipment, or property for the storage or warehousing of foods, and that the term "warehouse" includes all storehouses where grain is stored for a compensation.

Section 60-0203 of the 1943 Revised Code prescribes the duties of the Public Service Commission of this state and reads as follows:

"The commission shall:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses;
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination;
3. Determine and fix the intrastate rates for the transportation of all grain and grain products moving to our from any public terminal grain elevator within the state of North Dakota. All such rates shall be just and reasonable and shall be made with the view of recognizing such public terminal grain elevator as a public terminal market. No rates shall be established until notice has been given and an opportunity afforded all interested parties to appear and be heard; and
4. Make all proper rules and regulations for carrying out and enforcing any law in this state regarding public warehouses."

Under the provisions of section 60-0203, quoted herein, the Public Service Commission has general supervision over these public utilities, including weighing and storing of grain, and the management of public warehouses.

Since the cooperative elevator associations to which reference is made are operating public utilities and are under the supervision of the Public Service Commission as provided by the statute quoted herein, their stocks and securities would come within the exemptions enumerated in subsection 3 of section 10-0403 of the 1943 Revised Code, and would not, therefore, be subject to the requirements of the Securities Commission statutes.

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